

#### § 1356.65

foster or adoptive children other than those on behalf of whom foster care maintenance or adoption assistance payments may be made under this part.

(Approved by the Office of Management and Budget under control numbers 0980-0130 and 0980-0131)

[47 FR 30925, July 15, 1982, as amended at 48 FR 23117, May 23, 1983; 53 FR 50221, Dec. 14, 1988; 58 FR 67938, 67947, Dec. 22, 1993]

#### § 1356.65 State foster care allotment (title IV-E).

The State allotment for foster care under this part of Fiscal Years 1981 through 1984 shall be the greater amount as determined under paragraph (a) or (b) of this section; or, at the option of the State, under paragraph (c) of this section. This determination is made without regard to the allotment for any prior fiscal year except as specified under paragraph (c)(3) of this section. The State need not select the same option each year. The allotment is a single dollar amount, limiting Federal funds reimbursed to a State for foster care payments and related administrative expenditures (including training).

(a) The first method provides for the calculation of the base amount and adjustments for each fiscal year as follows:

(1) For purposes of determining allotments for later years, for Fiscal Year 1980, the State's allotment is the base amount increased by 21.2%.

(2) For each of the Fiscal Years 1981 through 1984, the allotment for the State shall be an amount equal to the State's allotment for the preceding fiscal year, increased or decreased by twice the change (but not more than 10%) in the percentage of the Consumer Price Index, prepared by the U.S. Department of Labor, and used to determine the cost of living adjustments for Social Security benefits under section 215(i) of the Act, Cost of Living Increases in Benefits. For this calculation, second quarter data of the preceding fiscal year shall be compared to those for the second quarter of the second preceding fiscal year. The arithmetic mean for the three months of the second quarter shall be used to estab-

#### 45 CFR Ch. XIII (10-1-96 Edition)

lish the Consumer Price Index for this quarter.

(3) The base amount in paragraph (a)(1) of this section, is calculated using the following formula: Maintenance payments plus attributable administrative expenditures plus attributable training expenditures. For the purposes of this formula:

(i) *Maintenance payments* are determined by:

(A) The amount of Federal funds that have been or may be paid on behalf of allowable claims for foster care maintenance payments for FY 1978 submitted to DHHS in accordance with section 306 of Pub. L. 96-272 (94 Stat. 530); and

(B) The amount of Federal funds that would have been paid for allowable claims on behalf of children meeting all requirements of section 408 of the Act for FY 1978 except that the State, on a Statewide basis, did not make such payments under State law, regulation or policy solely because the foster care was provided by a relative(s) of a child.

(ii) *Attributable administrative expenditures* means State expenditures for Fiscal Year 1978 attributable to the performance of activities required under section 408 of the Act for children for whom maintenance payments are included under paragraphs (a)(3)(i) (A) and (B) of this section, regardless of whether payment for the administrative expenditures might have been made under section 403 of the Act. Expenditures which may be included are limited to costs of conducting for those children: eligibility determination and redetermination, quality control, fair hearings and appeals, agency activities in judicial determination, placement, case review, case management and supervision, rate-setting, recruitment of foster care homes and institutions, licensing and a proportionate share of general related agency overhead. The amount of these expenditures is determined by one of the following three methods:

(A) By actual administrative expenditures attributable to the provision of foster care maintenance payments for Fiscal Year 1978, multiplied by 50%, if a State submits a report of these expenditures which is satisfactory to the

Secretary and which is supported by documentation;

(B) By an amount determined by the following formula:

(1) The State's total AFDC administrative expenditures for Fiscal Year 1978 divided by the State's average monthly number of AFDC cases in fiscal year 1978;

(2) The result of step (1) multiplied by 50%;

(3) The product of step (2) multiplied by the average monthly number of AFDC-Foster Care cases in Fiscal Year 1978; or

(C) By an amount determined as follows:

(1) The State's administrative expenditures (as stated in §1356.60(c)) of this part attributable to foster care maintenance payments made under title IV-E or IV-A during a period of three or more calendar months of Fiscal Year 1981 divided by the number of months in the period;

(2) The result of (1) reduced to the comparable Fiscal Year 1978 amount by use of the Implicit Price Deflator for State and Local Government Purchases (issued by the U.S. Department of Commerce);

(3) The result of (2) multiplied by the ratio of the average monthly number of AFDC-Foster Care cases in Fiscal Year 1978 compared to the comparable number of cases for the period used in (1);

(4) The product in (3) multiplied by 12 (for an annual amount); and

(5) The product in (4) multiplied by 50 percent (the FFP rate in administrative expenditures).

(6) The data in paragraph (1) need not have been paid or claimed under section 403 or 474 of the Act. They must have been reported to the Regional Program Director, ACYF no later than 30 days after the end of Fiscal Year 1981 in accordance with instructions from the Commissioner.

(iii) *Attributable Training Expenditures* are determined by:

(A) Actual training expenditures attributable to the provision of foster care maintenance payments for FY 1978, multiplied by 75%, if a State submits a report of these expenditures which is satisfactory to the Secretary and supported by documentation; or

(B) An amount determined by the following formula:

(1) The State's total AFDC training expenditures for FY 1978 divided by the State's average monthly number of AFDC cases in FY 1978;

(2) The result of (1) multiplied by 75%;

(3) The product of (2) multiplied by the average monthly number of AFDC-Foster Care cases in FY 1978.

(iv) *Sources of data and documentation.*

(A) All claims must be submitted on forms provided by the Secretary and in accordance with the constraints of Section 306 of Pub. L. 96-272 (94 Stat. 530).

(B) All reports to establish the claims which would have been allowable under paragraph (a) (3)(i)(B), (3)(ii)(A) of this section or

(i) Paragraph (a)(3)(iii)(A) of this section must have been submitted on forms provided by the secretary within forty-five (45) days after the end of the second quarter of FY 1981.

(v) *Disputed claims or reports.* (A) Only the following claims or reports in which DHHS and a State have a dispute will be included in the base amount:

(1) For maintenance payments, the claims submitted to DHHS in accordance with section 306 of Pub. L. 96-272, and the reports submitted to DHHS on expenditures and reported numbers of children under paragraph (3)(i)(B) of this section;

(2) For attributable administrative expenditures, the dollar amount reported to DHHS in accordance with paragraph (a)(3)(ii)(A) of this section;

(3) For attributable training expenditures, the dollar amount reported to DHHS in accordance with paragraph (a)(3)(iii)(A) of this section;

(4) Any claims or reported data in which a State and the Secretary have a dispute will be included in the base amount until the beginning of the fiscal year after the fiscal year in which the dispute is finally resolved by the Department. Allotments for fiscal years after solution of the dispute will be computed using the revised base amount.

(b) Under the second method, the allotment for the State equals an amount which bears the same ratio to

\$100 million as the under age 18 population of that State bears to the under age 18 population of the fifty States and the District of Columbia.

(c) Eligible States may select that their allotment be calculated by a third method.

(1) A State may *not* exercise this option unless: (i) In FY 1978, the percentage of the average monthly number of children in the State under age 18 who received AFDC-foster care maintenance payments under title IV-A of the Act as a proportion of all children under age 18 in the State was less than the corresponding national percentage for the 50 States and the District of Columbia;

(ii) Beginning in FY 1982, the percentage of the State's average monthly number of children under age 18 who received foster care maintenance payments during the Fiscal Year under title IV-A or IV-E of the Act compared to the State's total number of children under age 18 during the Fiscal Year has not exceeded the corresponding national percentage of the 50 States and the District of Columbia during Fiscal Year 1978.

(2) Under this method, the allotment is calculated as follows: (i) The base amount is determined by applying the provisions of paragraph (a)(3) of this section.

(ii) If for any of the fiscal years 1981-1984, the average monthly number of children receiving foster care maintenance payments in the State under title IV-A or IV-E of the Act exceeds the average monthly number of such children in the State for FY 1978, the base amount for that fiscal year shall be further increased by the percentage of increase in the State's foster care maintenance payment average monthly caseload for that Fiscal Year under title IV-A or IV-E of the Act over its comparable caseload under title IV-A for Fiscal Year 1978. This percentage increase may not exceed: for FY 1981—33.1%; FY 1982—46.4%; FY 1983—61.1%; and FY 1984—77.2%.

(iii) Increases or decreases in the base amount for each fiscal year are made in accordance with paragraphs (a)(1) and (2) of this section.

(3) If the State no longer meets the conditions for exercising the State op-

tion provided in paragraph (c)(1) of this section, but selected this option for the determination of its allotment for the preceding fiscal year, the allotment for the preceding fiscal year shall be used for the purpose of determining allotments for subsequent fiscal years through Fiscal Year 1984.

(4) For the purpose of establishing the average monthly number of children receiving foster care maintenance payments under title IV-A of the Act in Fiscal Year 1978 under this section, children who except for their placement with related persons would have received foster care under section 408 of the Act shall be included even though they did not receive foster care maintenance payments.

(5) For purposes of this allotment, in the event that there is a dispute between a State and the Secretary as to the number of such children (with respect to whom foster care maintenance payments were not made) for any fiscal year, then until the beginning of the fiscal year immediately following the fiscal year in which the dispute is finally resolved by DHHS, determinations under the foregoing subparagraphs shall be made on the basis of the number of such children claimed by the State.

(6) Interim allotments for each fiscal year shall be issued by the Secretary, or his designee, for States eligible under this option (paragraph (c)(1) of this section) not later than six months after the beginning of the fiscal year. The interim allotments shall be based on the most satisfactory data then available. The final allotment shall be issued not later than nine months after the end of that fiscal year and shall be based on the most recent satisfactory data then available.

(d) The limitation on available funds imposed by the allotment will be effective only if:

(1) The appropriation under section 420 of the Act for that fiscal year equals or exceeds the following amounts: for Fiscal Year 1981—\$163,550,000; 1982—\$220,000,000; and for Fiscal Years 1983 and 1984—\$266,000,000; and

(2) With respect to each of the Fiscal Years 1982-1984, the appropriation for title IV-B under section 420 of the Act

has been made before the beginning of the Fiscal Year to which the limitation applies.

(e) The State shall select the method for determining its allotment no later than forty-five (45) days after the end of the second quarter of the applicable (Federal) fiscal year.

[47 FR 30925, July 15, 1982]

**§ 1356.70 Transfer of funds from title IV-E to title IV-B.**

(a)(1) Funds available to the State within the foster care allotment for title IV-E which the State does not need for foster care purposes under title IV-E may be transferred to title IV-B and claimed by the State as reimbursement under that program only if the State has selected an allotment described under paragraph (a) or (b) of § 1356.65.

(2) If the limitation imposed by the allotment calculated under paragraph (a) or (b) of § 1356.65 is in effect, the amount of funds that a State may transfer to and claim under title IV-B is limited by the amount of funds not needed for foster care under title IV-E.

(3) If the limitation imposed by the allotment calculated under paragraph (a) or (b) of § 1356.65 is *not* in effect, the amount of funds that a State may transfer to and claim under title IV-B is further limited to the total amount of funds which, when added to the funds received under sections 420 and 424 of the Act for that Fiscal Year, would not exceed the State's share of the amounts listed in paragraph (d)(1) of § 1356.65.

(b) If the amount transferred to title IV-B, when added to the IV-B allotment, exceeds the amount which would be allotted to the State under title IV-B if the appropriation for title IV-B equaled \$141 million, the State may transfer funds under paragraph (a) of this section only if it has met the requirements of section 427(a) of the Act.

(c) If the appropriation for each of any two consecutive fiscal years under section 420 of the Act equalled \$266,000,000, the State may transfer funds under paragraph (a) of this section only if it has met the requirements of section 427(b) of the Act.

(d) If the total reimbursement to the State for expenditures under title IV-B

(including transferred funds) equalled the State's share of \$266,000,000 for each of two fiscal years in which the limitation under this section did *not* apply, the State may transfer funds under paragraph (a) of this section in any succeeding year only if it has met the requirements of section 427(b) of the Act.

(e) *Amount that may be transferred from title IV-E to title IV-B.* (1) The amount of funds that a State may transfer from title IV-E to title IV-B is:

(i) For any year in which the limitation specified under § 1356.65 is in effect, the amount by which the State's title IV-E foster care allotment exceeds the FFP in State expenditures needed for foster care maintenance payments and administrative expenditures, including training expenditures; and

(ii) For any year in which the limitations specified in § 1356.65 is *not* in effect, the amount determined under paragraph (e)(1)(i), of this section, is further limited to the amount which when added to the amount the State receives under section 420 of the Act (including any reallotted funds) does not exceed the amount of the State's allotment under section 420 of the Act which would have been in effect if the amount described under section 474(b)(2)(A) of the Act had been appropriated.

(2) Transferred funds must be used to reimburse expenditures under title IV-B (as defined under the regulations applicable to that program) for the same fiscal year for which they were originally available.

(i) The State shall apply for approval of transfer of these funds to the Regional ACYF office no later than August 15th, unless the Commissioner shall set a different date for all States because of special circumstances.

(ii) The procedures for application for funds and plans under title IV-B, including joint planning, shall apply to these funds.

(3) A State shall operate its foster care program under its State plan continuously throughout the time the plan is in effect, regardless of whether or